

**OFFICIAL COURT NOTICE**

**IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA**

<b>NATHAN FOOTE, et al.</b>	)	
	)	
<b>Plaintiffs,</b>	)	
	)	
<b>vs.</b>	)	<b>CIVIL ACTION NO. CV-2000-1074</b>
	)	
<b>POWER CARD INTERNATIONAL,</b>	)	
<b>INC., d/b/a KM.NET,</b>	)	
	)	
<b>Defendant.</b>	)	

**NOTICE OF CLASS ACTION LAWSUIT AND PROPOSED SETTLEMENT**

This is a notice under Rule 23 of the Alabama Rules of Civil Procedure about a proposed settlement of a class action lawsuit that may affect your interests. **PLEASE READ THIS NOTICE CAREFULLY.** Requests for information should be made to the Claims Administrator. Please do not call the Court. The Court has preliminarily determined that the terms of the proposed settlement are within the range of a fair, reasonable and adequate settlement.

**Description of the Action**

*Nathan Foote, et al. v. Powercard International, Inc.* is a class action lawsuit filed in the Circuit Court of Baldwin County, Alabama in 2000 against Powercard International, Inc. d/b/a KM.Net (“PCI”), seeking damages under Alabama Rule of Civil Procedure 23(b) for certain transactions which occurred relating to the purchase of internet shopping malls from PCI during the period beginning Friday, March 3, 2000 at 2:01 a.m. CST and ending March 22, 2000 at 2:01 a.m. CST, and sometimes referred to below as “KM.Net Internet activity.” Plaintiffs Foote and Lally each subsequently intervened in the class action seeking to represent class members in what are referred to below as Subclass A divisions A-1 and A-2. Additionally, Michigan Attorney General Jennifer M. Granholm, intervened to represent the interest of Michigan residents. Negotiations between the parties led to the proposed Settlement Agreement. While PCI has denied any liability in respect of plaintiffs’ claims, it has agreed to settle the Action to avoid the costs and inconvenience of further litigation. The Court has not decided whether plaintiffs’ claims are

meritorious, and this Notice should not be understood as an expression of any opinion by the Court as to the merits of any claims or defenses.

### **Class Action Status**

The Court has entered an Order that certifies the Subclass divisions described below for class action status solely for settlement purposes. Accordingly, Plaintiffs Lally and Foote and counsel listed below are authorized to represent your interests in this settlement.

#### **SUBCLASS DIVISION A-1** represented by Plaintiff Kenneth Lally:

**All persons or other entities who purchased only one internet shopping mall from PCI, such purchase having been made on the KM.Net Internet during the period beginning March 3, 2000, at 2:01 a.m. CST, and ending March 22, 2000, at 2:01 a.m. CST, and resulting in that person's or entity's bank account being electronically debited on or after March 22, 2000, in the amount of the purchase price;**

#### **SUBCLASS DIVISION A-2** represented by Plaintiff Nathan Foote:

**All persons or other entities who, irrespective of the total number of their purchases of internet shopping malls from PCI, purchased two or more Internet shopping malls on the KM.Net Internet during the period beginning March 3, 2000, at 2:01 a.m. CST, and ending March 22, 2000, at 2:01 a.m. CST, resulting in that person's or entity's bank account being electronically debited on or after March 22, 2000, in the amount of the purchase price of such mall(s).**

### **Reasons for Settlement**

Class counsel have conducted substantial formal and informal investigation. They have also considered defenses available to PCI and reviewed the law relating to the allegations contained in the class action. Having made this investigation and considering the facts developed to date and the applicable law, and taking into account all of the circumstances, including the risks of litigation, Class Counsel believe that settlement will confer upon the Class Members substantial benefits, and Class Counsel and the named Class Representatives have concluded that it is desirable and in the best interests of the Subclass to settle the Action in the manner and on the terms set forth in the Agreement as summarized below.

## Summary of Proposed Settlement

The Action was brought as a class action and therefore settlement can proceed only with Court approval. The Court has preliminarily approved the Settlement Agreement and reserved the right to finally approve the settlement without modification and without further notice to the Class Members.

Under the terms of the preliminarily approved Class Action Settlement Agreement executed by the settling parties, PCI has agreed to have the Court select, approve and appoint a reputable and established firm to act as Settlement Administrator. Subclass A Members who timely submit a Verified Claim Form shall be eligible for a refund of the purchase price of the mall(s) such Subclass A Member purchased from PCI during the period beginning March 3, 2000, at 2:01 a.m. CST, and ending March 22, 2000, at 2:01 a.m. CST *minus* any Commissions actually received by the Subclass Member from PCI for the sale of internet shopping malls. This benefit shall be subject to the following exceptions, exclusions and conditions:

- A Subclass Member will not receive a refund if the Subclass Member's bank account was electronically debited for KM.Net Internet Activities, but the Subclass Member's bank ultimately restored or reccredited the debited funds to the Subclass Member's account.
- A Subclass Member will not receive a refund if the Subclass Member's bank account was electronically debited for KM.Net Internet Activities, but the Subclass Member subsequently received a refund from PCI or the Columbia Bank.
- A Subclass Member will not receive a refund if the Subclass Member has at any time received Commissions from PCI for the sale of internet shopping malls in an aggregate amount equal to, or in excess of the purchase price of internet malls purchased during the period beginning March 3, 2000, at 2:01 a.m. CST, and ending March 22, 2000, at 2:01 a.m. CST.
- PCI does not have the assets, cash or borrowing power necessary to pay the benefits described above. The funds needed to pay such benefits have been and are interpled in *The*

*Columbia Bank v. Network 1 Financial Corporation, et al*, Civil Action No. WMN-00-1002, an action pending in the United States District Court for the District of Maryland. **Although Settling Plaintiffs and PCI believe they and class members have a right to and interest in some of the interpled funds, and will use their best efforts to obtain possession or control of such funds in order to pay the benefits described above and all ancillary costs of this settlement, they cannot provide any assurances that they will succeed in obtaining possession or control of interpleaded funds. If they are unsuccessful, they will be unable to provide any of the benefits to the Subclass Members and this Settlement Agreement will be null and void.**

#### **Attorneys' Fees, Costs, and Expenses**

Provided that judicial approval of the settlement has been obtained, Class Counsel will apply for, and PCI will not oppose, Court approval of reasonable attorneys' fees, costs and expenses totaling up to Three Hundred Fifty Thousand (\$350,000.00) Dollars exclusive of the costs of the Claims Administrator and notice. The Settling Parties estimate that in order to pay the benefits and costs of this Settlement, the fund must be between \$5 million and \$6 million. Class Counsel also will apply for Court approval of funds to pay the cost of settlement administration and for a one-time payment of Two Thousand Five Hundred (\$2,500.00) Dollars to each Class Representative as compensation for his time and effort devoted to representation of the Subclass A.

#### **Release**

Except for the rights and obligations provided for in the Settlement Agreement, Plaintiffs Lally and Foote and every settling class member agree to release and forever discharge any and all claims arising from or in any way relating to the purchase from PCI of internet shopping malls during the period beginning March 3, 2000, at 2:01 a.m. CST, and ending March 22, 2000, at 2:01 a.m. CST, and any and all related causes of action, claims, damages, equitable, legal and administrative relief, interest, demands or rights, whether based on federal, state or local statute or ordinance, regulation, contract, common law or any other source, that have been, or could have been, may be or could be alleged or asserted now or in

the future by Plaintiffs Lally, Foote or any Member of Subclass A and its divisions A-1 and A-2 and B against PCI, The Columbia Bank, Network One Financial Corporation, EFTNET Corporation, Merchant Commerce, Inc., and all financial institutions in the United States at which bank accounts were electronically debited on or after March 22, 2000, in connection with the purchase of internet shopping malls from PCI, including without limitation West Side Auto Employees Federal Credit Union, Central Bank & Trust Company, Citizens Bank, Charter One Bank, FSB and all of their respective predecessors and successors, parents, affiliates, subsidiaries, divisions, licensees, reinsurers, instrumentalities, agents, assignors, assignees, transferors, transferees, stockholders, present and former directors, officers, employees, agents, servants, loaned agents, loaned servants, servicers, servicing agents, attorneys, and/or any person, firm, corporation or other entity of any type or description for whose acts or omissions they may be held liable.

#### **Limited Indemnification**

A Subclass Member may elect to file a claim seeking to recover reimbursement for one or more Internet shopping mall purchases made for the benefit of a third party or entity. Any Subclass Member who files a claim seeking reimbursement for such mall purchases on behalf of a third party or entity agrees to indemnify and hold harmless the Settlement Administrator and PCI, their respective directors, officers, employees and agents, past and present, from any and all claims asserted by a third party for reimbursement of money received by a Subclass Member which represents a refund on that third party's behalf including damages, costs, attorneys fees or other expenses. However, this indemnity obligation shall be limited to the total amount debited from the Subclass Member's account during the class period. The indemnified party shall not be entitled to this limited indemnification if a Subclass Member can show that the third party asserting the claim(s) has been reimbursed in the amount of payment to the Subclass Member.

### **How to File a Proof of Claim**

If you wish to file a Verified Claim Form, you must complete and sign the attached Verified Claim Form, and mail it to: KM.Net Litigation, Settlement Administrator, **P.O. Box 3108, Mobile, Alabama 36652-3108.**

If you do not timely complete and file the attached Verified Claim Form, you will not receive any benefits from this settlement. The Verified Claim Form must be mailed and **postmarked no later than 12:00 midnight January 25, 2002** or your claim will be denied and you will not receive any settlement benefits.

### **Settlement Hearing**

A hearing will be held before the Circuit Court of Baldwin County, Alabama, Baldwin County Courthouse, One Courthouse Square, Bay Minette, Alabama, on **February 19, 2002**, at **1:00 p.m.** to determine whether this Settlement Agreement is fair and reasonable and should be given final approval by the Court. If the Settlement Agreement is approved, the Action will be dismissed on the merits, with prejudice and all Class Members will be bound by the Agreement.

If you are satisfied with the Settlement Agreement as outlined in this notice, you need not attend the settlement hearing.

### **Objecting to the Proposed Settlement**

If you wish to object to final approval of the proposed settlement, you must submit a written notice of intention to be heard and specific written objections, the reasons for objection, and any documents or writings to be considered at the hearing. Your written materials must be postmarked by **January 25, 2002.** No objectors shall be heard and no objection shall be received or considered by the Court unless the objection as described above is timely sent to counsel for the parties. If your objection in the manner required has not been sent by that date, the Court will not consider it in determining the fairness of the Settlement Agreement. Your objection must be mailed to:

**Robert E. Clute, Jr., Esq.  
Johnstone Adams, Bailey, Gordon & Harris LLC**

**P.O. Box 1988  
Mobile, AL 36633  
Class Counsel**

**Daniel G. Blackburn, Esq.  
P. O. Box 458  
Bay Minette, AL 36507  
Counsel for Defendant**

**Katharyn Barron  
First Assistant Attorney General  
Consumer Protection Division  
Post Office Box 30213  
Lansing, MI 48909**

**And**

**Jackie Calhoun, Clerk  
Circuit Court of Baldwin County  
Post Office Box 1149  
Bay Minette, AL 36507**

If the Court does not approve the Settlement Agreement, the conditional settlement will be voided, no money will be paid, and the case will proceed to trial. However, if that happens, there is no assurance that a decision at trial will be in favor of the Class Members, that a favorable trial decision, if any, would be as favorable to the Class Members as this settlement, or that any favorable trial decision would be upheld if any appeal was filed.

**How to Exclude Yourself (“Opt out”) From the Proposed Settlement**

If you choose to opt out of the settlement, you will not be entitled to participate in the Settlement Benefits and you will not be bound by any settlement or favorable or unfavorable judgment in this action. Any requests to opt out must legibly set forth in writing your name, address and telephone number, the case name and number of this lawsuit, and a clear statement that you wish to opt out of the action. This opt out notice must be postmarked no later than **January 25, 2002**, and sent by First Class United States mail to:

**KM.Net Litigation**  
**Attention: Robert E. Clute, Jr., Esq.**  
**Johnstone, Adams, Bailey, Gordon & Harris LLC**  
**P. O. Box 1988**  
**Mobile, AL 36633**

If you request exclusion on behalf of a business entity, you are to set forth your legal authority to execute the request on behalf of the entity.

If you do not file a timely exclusion notice, you will not be entitled to be excluded from the settlement, and you will be bound by its terms. If you have not properly and timely filed a Verified Proof of Claim, you will not be eligible for any Settlement Benefit, and you will be prohibited in accordance with the terms of the Release and Discharge from making any claim against and Discharged Party or Non-Party.

#### **Further Information**

This notice only contains a summary of the pleadings, Settlement Agreement and other materials. For a complete statement of the Action, please refer to the pleadings and other papers on file that may be inspected at the office of the Clerk, Circuit Court of Baldwin County, Alabama, Baldwin County Courthouse, One Courthouse Square, Bay Minette, Alabama. To obtain more specific information concerning the terms of the preliminarily approved settlement, the Settlement Agreement is posted on the "What's New" portion of the Michigan Attorney General's website [www.ag.state.mi.us](http://www.ag.state.mi.us). Class Members may obtain a copy of the Settlement Agreement by addressing a request by mail to Robert E. Clute, Jr., Esq. at the above addresses.

**NO PHONE CALLS REGARDING THIS NOTICE OR THE PROPOSED SETTLEMENT MAY BE DIRECTED TO, OR WILL BE ANSWERED BY COUNSEL FOR THE PARTIES OR PCI. IN ADDITION, DO NOT TELEPHONE OR WRITE THE JUDGE OR CLERK OF THE COURT. ANY QUESTIONS RELATING TO THE SETTLEMENT OR VERIFIED CLAIM FORM SHOULD BE DIRECTED TO THE SETTLEMENT ADMINISTRATOR AT THE ADDRESS LISTED ON THE VERIFIED CLAIM FORM.**

Dated this \_\_\_\_ 1<sup>st</sup> \_\_\_\_ day of October, 2001.



/s/

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By Order of  
ROBERT WILTERS  
Baldwin County Circuit Court Judge  
One Courthouse Square  
Bay Minette, AL 36507